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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING: QUESTION OF HUMAN RIGHTS IN CYPRUS

Letter dated 13 March 2002 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith the observations of my government pertaining to the judgement of the European Court of Human Rights in the case Cyprus v. Turkey.

I would appreciate if you would have the enclosed observations* circulated as an official document of the fifty-eighth session of the Commission on Human Rights under item 9 (a) of the agenda.

(Signed) Murat SUNGAR
Ambassador
Permanent Representative

* Reproduced as received, in the language of submission only.

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NOTE ON THE JUDGEMENT IN THE CASE OF CYPRUS V. TURKEY

The European Court of Human Rights (ECHR) announced its judgement on 10 May 2001 in the Cyprus v. Turkey case lodged against Turkey by the Greek Cypriot Administration. The following observations can be formulated as a first evaluation of the judgement.

- The judgement ignores the presence of the Turkish Republic of Northern Cyprus (TRNC). The Greek Cypriot administration is considered as the sole legal government of the Island, even though the bi-communal Republic of Cyprus ceased to exist due to the forceful expulsion of the Turkish Cypriots from all the organs of State, usurpation of powers by the Greek Cypriot side, and changes made to the basic Articles of the Constitution contrary to the Treaties which established the Republic of Cyprus. The judgement is based on the idea that Cyprus is a unitary state.

- The approach that ECHR adopted in its judgement is against the fact that there are two separate states in the Island. It contradicts the fact that Turkish and Greek peoples in Cyprus are in equal status and that both peoples have the right to self-determination.

- The ECHR, in its judgement considers Turkey as the sole respondent state for allegations of the Cypriot Administration. The judgement is based on the presumption that the only authority in North Cyprus is Turkey and that Turkey, because of the "presence of Turkish troops", exercises "effective control" in North Cyprus and consequently is responsible for all human rights violations in the Turkish Republic of Northern Cyprus (TRNC). The court failed to examine the issue whether the "Turkish troops", whose presence is for purposes of security of the Turkish Cypriots, are in any way involved in the government of TRNC. The main fallacy of the Court judgement is, however, on the issue of State responsibility, expressed in para 78, that "any other finding" on the issue of responsibility "would result in a regrettable vacuum in the system of human-rights protection in the territory in question". The Court was clearly influenced by the submission that, unless Turkey is held to be accountable, no State would be accountable in North Cyprus, with the result that the system of the Convention would be inoperative in that area. This led to findings that every violation, whatever its nature and whoever perpetrated it, is imputable, without more, to Turkey. This does

not seem to be a convincing basis for the Court's approach to the critical question of State responsibility.

The judgement ignores the main parameters agreed upon by the parties during the long standing peace process under the auspices of the UN, such as the bizonality principle, the existence in Cyprus of two sides, the fact that one side does not represent the other.

- The parts of the judgement relating to ownership disregard the bizonality principle, which is one of the main parameters of the Cyprus issue. The restitution which was the main thesis of the Greek Cypriot side up to now is being adopted . The Court completely ignored the 1975 Vienna Population Exchange agreement, which was implemented under UN auspices, as a result of which appoximately 65,000 Turkish Cypriots then in the South moved to the safety of the Turkish Cypriot North. Similarly, Greek Cypriots then in the North, voluntarily moved to the South. The Court also ignored the fact that because of the long time lapse, expropriations carried out by the Turkish Cypriot authorities in the North and Greek Cypriot authorites in the South, and because of the transformation in the physical and the human environment in both the Turkish Cypriot side and the Greek Cypriot side, the state of many properties that are subject to exchange have changed so much that the idea of restitution is impossible to implement in practice. It would be unrealistic and impracticable to reverse the present realities and to return to the status quo ante, as the Court judgement seems to suggest. The property issue, solution of which depends on a political settlement, which may involve global exchange of Greek Cypriot properties in the North with Turkish Cypriot properties in the South, and/or compensation if need be, cannot be adjudged in a manner detached form the present realities in Cyprus, as the Court judgement seems to suggest.

- It is obvious that the judgement of the ECHR, is consistent with EU's approach which presents the political disputes to which it is not directly involved, as human rights issues and by way of Court judgements seek solutions to be consistent with its approaches.

The core of the Cyprus problem is the ethnic cleansing that the Turkish Cypriots were subjected to between 1963-1974. The principal worry of the Turkish Cypriots is the security issue. Naturally the Turkish Cypriots do not want to live again the circumstances that led to the events between 1963-1974 and the violence and genocide applied by the Greeks during this period.

As it was stated in September 1999 by the former president of the United States, Mr Clinton, in Cyprus it is not possible to return to the circumstances of Cyprus before 1974.

However, the judgement of the ECHR has such a meaning. The judgement as a whole violates the principle of the bizonality. By one of its main elements which is the restitution, the dissolution of the Turkish community in the Greek Cypriots is being aimed and the events before 1974 are invited.

The only realistic solution in Cyprus is the confederation. As Turkey underlined until now, it is not possible to reach a lasting solution ignoring the realities of the island, the past sad experiences and the balances in Cyprus. The bizonality in Cyprus is essential. The main parameter of the UN process and the core of the issue is the voluntarily exchange of populations in 1975. In addition, the global transfer of the property by way of compensation the Turkish side is arguing, is an issue present in the 1992 "Set of Ideas" as well.

In Cyprus v. Turkey case the ECHR rendered a judgement on all aspects of the Cyprus problem which in essence is a political issue, and accordingly deepened the gap between the legal parameters and the reality.

However, these issues are within the scope of the goodwill mission of the UN. The fact that the judgement is void of any legal basis and that it has a political nature is a sign that the approach of the ECHR is political. With its attitude towards the judgement the Greek side demonstrated that it has no will to reach a solution by way of negotiations.

In the light of the observations above, from the Turkish point of view the judgment has no applicability. However, it contains some relevant points which should be underlined. The judgement recognizes the existence of a de facto authority and entity in the island and stresses the independence of its courts. It further states, with reference to the TRNC Constitution that the said courts are established by law. Through the judgement, the ECHR accepts also that there are domestic remedies avaible for both Cypriot Turks and Greek community in Karpas (TRNC).